

Senate Bill No. 1632

CHAPTER 566

An act to amend Sections 1947.7 and 1947.15 of the Civil Code, relating to real property.

[Approved by Governor September 15, 1996. Filed
with Secretary of State September 17, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1632, Costa. Real property: rent control.

(1) The Information Practices Act of 1977 governs the disclosure of information maintained by state agencies. Certain violations of that act are a misdemeanor. Existing law, including the Costa-Hawkins Rental Housing Act, regulates local rent control programs.

This bill would add provisions affecting that latter act and applicable to local agencies, regulating the confidentiality of names and other information with respect to tenants or former tenants pursuant to the Information Practices Act of 1977, thereby imposing a state-mandated local program.

(2) Existing law requires any city, county, or city and county that has a system of rent control, and which does not include a system of vacancy decontrol, as defined, to permit reasonable expenses, fees, and other costs for professional services incurred in the course of successfully pursuing specified rights to be included in any calculation of net operating income and operating expenses used to determine a fair return to the owner of the property.

This bill would make a technical, nonsubstantive change to this provision.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1947.7 of the Civil Code is amended to read:

1947.7. (a) The Legislature finds and declares that the operation of local rent stabilization programs can be complex and that disputes often arise with regard to standards of compliance with the regulatory processes of those programs. Therefore, it is the intent of the Legislature to limit the imposition of penalties and sanctions

against an owner of residential rental units where that person has attempted in good faith to fully comply with the regulatory processes.

(b) An owner of a residential rental unit who is in substantial compliance with an ordinance or charter that controls or establishes a system of controls on the price at which residential rental units may be offered for rent or lease and which requires the registration of rents, or any regulation adopted pursuant thereto, shall not be assessed a penalty or any other sanction for noncompliance with the ordinance, charter, or regulation.

Restitution to the tenant or recovery of the registration or filing fees due to the local agency shall be the exclusive remedies which may be imposed against an owner of a residential rental unit who is in substantial compliance with the ordinance, charter, or regulation.

“Substantial compliance,” as used in this subdivision, means that the owner of a residential rental unit has made a good faith attempt to comply with the ordinance, charter, or regulation sufficient to reasonably carry out the intent and purpose of the ordinance, charter, or regulation, but is not in full compliance, and has, after receiving notice of a deficiency from the local agency, cured the defect in a timely manner, as reasonably determined by the local agency.

“Local agency,” as used in this subdivision, means the public entity responsible for the implementation of the ordinance, charter, or regulation.

(c) For any residential unit which has been registered and for which a base rent has been listed or for any residential unit which an owner can show, by a preponderance of the evidence, a good faith attempt to comply with the registration requirements or who was exempt from registration requirements in a previous version of the ordinance or charter and for which the owner of that residential unit has subsequently found not to have been in compliance with the ordinance, charter, or regulation, all annual rent adjustments which may have been denied during the period of the owner’s noncompliance shall be restored prospectively once the owner is in compliance with the ordinance, charter, or regulation.

(d) In those jurisdictions where, prior to January 1, 1990, the local ordinance did not allow the restoration of annual rent adjustment, once the owner is in compliance with this section the local agency may phase in any increase in rent caused by the restoration of the annual rent adjustments that is in excess of 20 percent over the rent previously paid by the tenant, in equal installments over three years, if the tenant demonstrates undue financial hardship due to the restoration of the full annual rent adjustments. This subdivision shall remain operative only until January 1, 1993, unless a later enacted statute which is chaptered by January 1, 1993, deletes or extends that date.



(e) For purposes of this subdivision, an owner shall be deemed in compliance with the ordinance, charter, or regulation if he or she is in substantial compliance with the applicable local rental registration requirements and applicable local and state housing code provisions, has paid all fees and penalties owed to the local agency which have not otherwise been barred by the applicable statute of limitations, and has satisfied all claims for refunds of rental overcharges brought by tenants or by the local rent control board on behalf of tenants of the affected unit.

(f) Nothing in this section shall be construed to grant to any public entity any power which it does not possess independent of this section to control or establish a system of control on the price at which accommodations may be offered for rent or lease, or to diminish any power to do so which that public entity may possess, except as specifically provided in this section.

(g) In those jurisdictions where an ordinance or charter controls, or establishes a system of controls on, the price at which residential rental units may be offered for rent or lease and requires the periodic registration of rents, and where, for purposes of compliance with subdivision (e) of Section 1954.53, the local agency requires an owner to provide the name of a present or former tenant, the tenant's name and any additional information provided concerning the tenant, is confidential and shall be treated as confidential information within the meaning of the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of this part). A local agency shall, to the extent required by this subdivision, be considered an "agency" as defined in subdivision (b) of Section 1798.3. For purposes of compliance with subdivision (e) of Section 1954.53, a local agency subject to this subdivision may request, but shall not compel, an owner to provide any information regarding a tenant other than the tenant's name.

SEC. 2. Section 1947.15 of the Civil Code is amended to read:

1947.15. (a) The Legislature declares the purpose of this section is to:

(1) Ensure that owners of residential rental units that are subject to a system of controls on the price at which the units may be offered for rent or lease, or controls on the adjustment of the rent level, are not precluded or discouraged from obtaining a fair return on their properties as guaranteed by the United States Constitution and California Constitution because the professional expenses reasonably required in the course of the administrative proceedings, in order to obtain the rent increases necessary to provide a fair return, are not treated as a legitimate business expense.

(2) Encourage agencies which administer a system of controls on the price at which residential rental units may be offered for rent or lease, or controls the adjustment of the rent level, to enact streamlined administrative procedures governing rent adjustment

petitions which minimize, to the extent possible, the cost and expense of these administrative proceedings.

(3) Ensure that the cost of professional services reasonably incurred and required by owners of residential rental units subject to a system of controls in the price at which the units may be offered for rent or lease, or controls on the adjustments of the rent level in the course of defending rights related to the rent control system, be treated as a legitimate business expense.

(b) Any city, county, or city and county, including a charter city, which administers an ordinance, charter provision, rule, or regulation that controls or establishes a system of controls on the price at which all or any portion of the residential rental units located within the city, county, or city and county, may be offered for rent or lease, or controls the adjustment of the rent level, and which does not include a system of vacancy decontrol, as defined in subdivision (i), shall permit reasonable expenses, fees, and other costs for professional services, including, but not limited to, legal, accounting, appraisal, bookkeeping, consulting, property management, or architectural services, reasonably incurred in the course of successfully pursuing rights under or in relationship to, that ordinance, charter provision, rule, or regulation, or the right to a fair return on an owner's property as protected by the United States Constitution or California Constitution, to be included in any calculation of net operating income and operating expenses used to determine a fair return to the owner of the property. All expenses, fees, and other costs reasonably incurred by an owner of property in relation to administrative proceedings for purposes specified in this subdivision shall be included in the calculation specified in this subdivision.

(c) Reasonable fees that are incurred by the owner in successfully obtaining a judicial reversal of an adverse administrative decision regarding a petition for upward adjustment of rents shall be assessed against the respondent public agency which issued the adverse administrative decision, and shall not be included in the calculations specified in subdivisions (b) and (d).

(d) (1) Notwithstanding subdivision (b), the city, county, or city and county, on the basis of substantial evidence in the record that the expenses reasonably incurred in the underlying proceeding will not reoccur annually, may amortize the expenses for a period not to exceed five years, except that in extraordinary circumstances, the amortization period may be extended to a period of eight years. The extended amortization period shall not apply to vacant units and shall end if the unit becomes vacant during the period that the expense is being amortized. An amortization schedule shall include a reasonable rate of interest.

(2) Any determination of the reasonableness of the expenses claimed, of an appropriate amortization period, or of the award of an



upward adjustment of rents to compensate the owner for expenses and costs incurred shall be made as part of, or immediately following, the decision in the underlying administrative proceeding.

(e) Any and all of the following factors shall be considered in the determination of the reasonableness of the expenses, fees, or other costs authorized by this section:

(1) The rate charged for those professional services in the relevant geographic area.

(2) The complexity of the matter.

(3) The degree of administrative burden or judicial burden, or both, imposed upon the property owner.

(4) The amount of adjustment sought or the significance of the rights defended and the results obtained.

(5) The relationship of the result obtained to the expenses, fees, and other costs incurred (that is, whether professional assistance was reasonably related to the result achieved).

(f) This section shall not be applicable to any ordinance, rule, regulation, or charter provision of any city, county, or city and county, including a charter city, to the extent that the ordinance, rule, or regulation, or charter provision places a limit on the amount of rent that an owner may charge a tenant of a mobilehome park.

(g) For purposes of this section, the rights of a property owner shall be deemed to be successfully pursued or defended if the owner obtains an upward adjustment in rents, successfully defends his or her rights in an administrative proceeding brought by the tenant or the local rent board, or prevails in a proceeding, brought pursuant to Section 1947.8 concerning certification of maximum lawful rents.

(h) (1) If it is determined that a landlord petition assisted by attorneys or consultants is wholly without merit, the tenant shall be awarded a reduction in rent to compensate for the reasonable costs of attorneys or consultants retained by the tenant to defend the petition brought by the landlord. The reasonableness of the costs of the tenant's defense of the action brought by the landlord shall be determined pursuant to the same provisions established by this section for determining the reasonableness of the landlord's costs for the professional services. The determination of the reasonableness of the expenses claimed, an appropriate amortization period, and the award of a reduction in rents to compensate the tenant for costs incurred shall be made immediately following the decision in the underlying administrative proceeding.

(2) If it is determined that a landlord's appeal of an adverse administrative decision is frivolous or solely intended to cause unnecessary delay, the public agency which defended the action shall be awarded its reasonably incurred expenses, including attorney's fees, in defending the action. As used in this paragraph, "frivolous" means either (A) totally and completely without merit; or (B) for the sole purpose of harassing an opposing party.

(i) For purposes of this section, the following terms shall have the following meanings:

(1) “Vacancy decontrol” means a system of controls on the price at which residential rental units may be offered for rent or lease which permits the rent to be increased to its market level, without restriction, each time a vacancy occurs. “Vacancy decontrol” includes systems which reimpose controls on the price at which residential rental units may be offered for rent or lease upon rental of the unit.

(2) “Vacancy decontrol” includes circumstances where the tenant vacates the unit of his or her own volition, or where the local jurisdiction permits the rent to be raised to market rate after an eviction for cause, as specified in the ordinance, charter provision, rule, or regulation.

(j) This section shall not be construed to affect in any way the ability of a local agency to set its own fair return standards or to limit other actions under its local rent control program other than those expressly set forth in this section.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

